

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

KEVIN LUCIOUS, Appellant,	)	No. ED101006
	)	
vs.	)	Appeal from the Circuit Court
	)	of the City of St. Louis
STATE OF MISSOURI, Respondent.	)	Filed: January 13, 2015

Kevin Lucious appeals the judgment of the motion court dismissing his case on the ground that a 2009 judgment denying his motion to reopen his Rule 29.15 proceedings due to abandonment was final and the motion court was thereafter without any authority to act.

AFFIRMED.

Division Three holds:

The 2009 judgment finding no cognizable claims of abandonment—and holding, *ex gratia*, that Lucious’s underlying claims of ineffective assistance of counsel were without merit anyway—was final ninety days after Lucious’s motion to vacate that judgment was filed because it was never ruled on by the motion court and therefore was deemed denied by operation of law. The court had no authority to act thereafter and properly dismissed the case. Even if we had before us the issue of abandonment, we would conclude that, at most, post-conviction counsel actively interfered with Lucious’s ability to timely file his original pro se Rule 29.15 motion. The remedy for such interference would be consideration of the motion as having been timely filed. Since the motion court has already reviewed the claims in that motion, *ex gratia* in the 2009 judgment, Lucious has received all the remedy to which he would have been entitled under any circumstance.

Opinion by: Robert G. Dowd, Jr., J  
Kurt S. Odenwald, P.J. and Gary M. Gaertner, Jr., J., concur.

Attorney for Appellant: Robert W. Lundt

Attorneys for Respondent: Chris Koster, Karen L. Kramer

<p><b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b></p>
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